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| 09/345,090      | 06/30/1999  | BRUCE C. JOHNSON     | PPC-691             | 9807             |

7590 01/28/2002

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EXAMINER

RUHL, DENNIS WILLIAM

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3761

DATE MAILED: 01/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/345,090

Applicant(s)

JOHNSON ET AL.

Examiner

Dennis Ruhl

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 3761

1. The disclosure is objected to because of the following informalities: There are numerous blanks found in the specification that need to be filled in. See pages 1,19,21,24,25. Applicant is requested to review the specification and make sure that any and all blanks are filled in or amended in an appropriate manner..

Appropriate correction is required.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 1, does the wrapping element or the absorbent articles that it is useful in comprise a fluid impervious plastic material, etc.? This is not clear.

With respect to claims 1,29,52,55, there is a recitation of first and second surfaces for the web. Is this in addition to the 1<sup>st</sup>/2<sup>nd</sup> surfaces recited in a and b? How many surfaces are being claimed? What is the difference between the first and second surfaces and the first and second outer surfaces? The language "by the either of the first and second layers" is confusing. What is this attempting to claim? Where is the word "or" that is usually associated with the use of the term either? As an example, it would be incorrect to state "either A and B" as opposed to "either A or B". Do the first and second layers have the apertures or just one of the first or second layers? There is no antecedent basis for "the plane", "each edge", "the intersecting sidewall portions", and "the interconnected sidewall portions". These antecedent basis problems make the

Art Unit: 3761

claim confusing (indefinite). With respect to the language that reads "each of the fiber-like elements exhibiting a cross-section comprising.." the examiner is a little confused. Do the fibers themselves have this cross section or does the web itself exhibit this cross section? The examiner does not see how the fiber like elements that make up the web can each have a base and a sidewall portion, etc.. Correction of all of the above is required.

With respect to claims 7,8,17,18,35,42, what thermoplastic component is being referred to by the language "the thermoplastic component". This is not clear because more than one have been previously recited.

With respect to claims 9,23,47, the examiner thinks that applicant is attempting to use a Markush type claim format; however, it appears that the claim is unbounded because of the use of the term "comprising". The scope of this claim is not clear because it is not clear whether or not a Markush format is being used. Proper Markush language is "from the group consisting of".

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily

Art Unit: 3761

published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-23,25-28,52-55 are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al. (6228462).

With respect to claims 1-8,10-19,28, Lee discloses a multi layer film for use in absorbent articles. See the figures where the 3-D web can be seen. The 1<sup>st</sup> layer is what Lee calls the rigid layer 103. See column 8, lines 40-49 for the disclosure of the 2<sup>nd</sup> layer (2 rigid skin layers with an intermediate layer). The intermediate layer is the less rigid layer 101. See column 8, lines 63-65 and column 9, lines 10-13 for the disclosure of the 1<sup>st</sup> and 2<sup>nd</sup> thermoplastic components as claimed. The web also has apertures 41, base portions 51, and sidewall portions 53.

With respect to claims 9,23, see column 9, lines 11-13.

With respect to claims 10,11, the embodiment that has the 2 rigid skin layers (col. 8, lines 40-49) satisfies the claim limitations for the 2<sup>nd</sup> layer.

With respect to claims 20-22,25,26, see column 9, lines 14-36.

With respect to claim 27 see column 8, lines 40-49.

With respect to method claims 52-55 in addition to what the examiner has already stated Lee discloses, Lee discloses the claimed method of making. Applicant is referred to the method of making section in the specification of Lee where the claimed limitations can be found.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3761

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (6228462). Lee discloses the invention substantially as claimed. Lee does not disclose the claimed amount of the pigment but does disclose that a pigment may be present. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide Lee with the claimed amount of pigment depending on the color change desired. The more pigment that is added, more of a color change will occur.

8. Claims 29-51 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262.

The examiner can normally be reached on Tuesday through Friday.

Art Unit: 3761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

DR  
January 23, 2002



DENNIS RUHL  
PRIMARY EXAMINER